

HOUSE BILL REPORT

ESHB 2541

As Passed House:
February 15, 2010

Title: An act relating to maximizing the ecosystem services provided by forestry through the promotion of the economic success of the forest products industry.

Brief Description: Promoting the economic success of the forest products industry.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Takko, Orcutt, Kessler, Kretz and Blake).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/21/10, 1/29/10 [DPS];
General Government Appropriations: 2/5/10 [DPS(AGNR)].

Floor Activity:

Passed House: 2/15/10, 98-0.

Brief Summary of Engrossed Substitute Bill

- Directs the Department of Natural Resources to develop landowner conservation proposals that support forest landowners by December 31, 2011.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Blake, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Liias, Pearson, Rolfes, Van De Wege and Warnick.

Minority Report: Do not pass. Signed by 3 members: Representatives Jacks, McCoy and Nelson.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Blake, Kenney, Klippert, Sells, Short, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Dunshee, Hudgins and Pedersen.

Staff: Owen Rowe (786-7391).

Background:

The Forest Practices Board (Board) is a 13-member independent panel chaired and administered by the Commissioner of Public Lands. The main duty of the Board is to adopt and maintain the forest practices rules. The forest practices rules are the administrative rules that govern all private and state forest practice activities and establish minimum standards for forest practices. They also provide procedures for the voluntary development of management plans, establish necessary administrative provisions, and allow for the development of watershed analyses [RCW 76.09.040].

There are 10 stated purposes of the forest practices rules [RCW 76.09.010]. These purposes include affording protection to forest soils, recognizing the public and private interest in profitable timber growing, avoiding unnecessary duplication of regulation, providing interagency and tribal coordination and cooperation, achieving compliance with water pollution laws, giving consideration to local planning efforts, and promoting permitting efficiency.

Summary of Engrossed Substitute Bill:

The Department of Natural Resources (DNR) is required to develop landowner conservation proposals that support forest landowners by December 31, 2011. In the development of the proposals, the DNR must consult with the Board, Indian tribes, small forest landowners, conservation groups, industrial foresters, and state, federal, and local government. The proposed initiatives, if any, must be presented to the Governor, the Legislature, the Commission of Public Lands, and the Board. The DNR must also offer to present their findings to the Washington congressional delegation, local governments, and appropriate agencies of the federal government.

The scale of the proposals developed by the DNR must be based on the resources available. The DNR may seek federal and private funds to support the development of proposals.

Appropriation: None.

Fiscal Note: Available. Requested on substitute bill on February 1, 2010.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) The state is losing its industrial forest land base, which should be a priority land use, at an alarming rate. Once a property is converted out of forestry it will never come back. The current Board has the right membership and is the right forum to address these issues.

The thoroughness of the forest practices rules has reached a pinnacle as to what they can accomplish, and there are more effective ways to protect public resources. There needs to be more tools in the toolbox to protect the working lands of the state. The Board should have the opportunity, not the mandate, to use voluntary conservation measures since incentives will help keep working foresters on the land. There are a few incentives available now, but the Board's progress towards approving their use moves at a glacial speed. There are many rules that allow the Board to stop a voluntary conservation measure, but none that help the Board get to yes.

The people most affected by the forest practices rules are everyday people. There are over 160,000 forest industry jobs in the state that need to be protected.

Recently the Board adopted a rule that was not the least burdensome to landowners. The Board looks for disproportionate impacts on small businesses, but does not consider the economic health of the entire industry.

(Opposed) This is an unnecessary bill that, if passed, would put federal Endangered Species Act (ESA) and Clean Water Act assurances in jeopardy. The Board already has the authority to use voluntary conservation measures and has done so at least three times. It is true that incentives for environmental compliance is a topic with a scope far larger than what is appropriate for the Board to discuss. Incentives may be the future, but first there must be established ground rules and sustainable markets.

Although voluntary conservation measures are allowed now, requiring them for every rule would greatly slow down the work of the Board. The adaptive management requirements of the ESA federal assurances require timely action by the Board, and the slowdown that would occur by having to first propose voluntary conservation measures would make timely action impossible. The proposed process would throw a monkey wrench into the Board's working and be used only to stop rulemaking from occurring. The vagueness of the language will only lead to needless debate and expensive litigation.

It should not be voluntary to follow a law. If it were voluntary, it's not clear what a state would do if people choose not to comply with the law. Citizens don't want the regulated community to only follow regulations if they are paid to do so.

The forest products industry agreed to the current forest practices rules. The complexity of the rules is a result of the industry negotiating away from the application of a simple rule. The Legislature has established a method for amending the forest practices rules and that process should be respected. It is a thorough and complicated process, but that was by design.

The Board is already required to balance the industry's well being with the protection of resources and the Administrative Procedures Act already requires the Board to consider the impact in small businesses and select the least burdensome option. The language in the bill is inconsistent with this mandate and could lead to putting economics before science. It is worth questioning if the forest products industry should be promoted over other industries.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) The state has lost 16 pulp mills in the last five years, and thousands of workers have lost their jobs. If this bill will help private foresters maintain land and continue to move wood then we support it. This bill creates a collaborative approach to balance the needs of the environment with job protection. This bill looks to keep the timber industry economically viable and to explore opportunities to protect the environment. Please support moving this bill out in its current form.

(With concerns) We have concerns about the University of Washington's involvement, and feel that the Forest Practices Board is the entity to do this work. This measure covers the important issue of incentivizing forest land owners to manage their lands in a way that protects the environment and water quality. In light of the current state budget environment we have a plan to reduce the fiscal impact of this initiative. The Northwest Environmental Forum could support the research, this organization is supported partially by donations. If this bill moves, it should stay in the Rules Committee until further work is completed.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): (In support) Representative Takko, prime sponsor; Debora Munguia, Washington Forest Protection Association; Norm Schaaf, Meril & Ring; and Bill Little, Carpenters Industrial Council.

(Opposed) Chuck Turley, Department of Natural Resources; Stephen Bernath, Department of Ecology; David Whipple, Washington Department of Fish and Wildlife; Miguel Perez-Gibson, Washington Environmental Council; Peter Goldman, Washington Forest Law Center; and Dawn Vyvyan, Yakama Nation.

Persons Testifying (General Government Appropriations): (In support) Sean L. O'Sullivan, Association of Western Pulp and Paper Workers; Patti Case, Green Diamond Simpson; and Debora Munguia, Washington Forest Protection Association.

(With concerns) Heath Packard, Department of Natural Resources; Stephen Bernath, Department of Ecology; and Miguel Perez, Washington Environmental Council.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources):
None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations):
None.